

**LEVI HUEBNER & ASSOCIATES, PC**

Levi Huebner (*pro hac vice*) (NY Bar No. 3029725)  
478 Malbone Street, Suite 100  
Brooklyn, NY 11225  
Telephone: (212) 354-5555  
Facsimile: (347) 350-8789  
E-Mail: [Newyorklawyer@msn.com](mailto:Newyorklawyer@msn.com)

and

**DUANE & SELTZER, LLP**

Dick Duane, Esq. (Bar No. 37889)  
2000 Center Street, Suite 300  
Berkeley, CA 94704  
Phone: (510) 841-8575  
Facsimile: (510) 845-3016  
E-Mail: [Dickduane2004@yahoo.com](mailto:Dickduane2004@yahoo.com)

Attorneys for Defendants

IMAGE RENT A CAR INC. and VAN RENTAL CO., INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**DIGBY ADLER GROUP LLC** d/b/a  
**BANDAGO**, a California limited liability  
Company,

Plaintiff,

vs.

**IMAGE RENT A CAR, INC.**, a New York  
Corporation, and **VAN RENTAL CO.,  
INC.**, a NEW YORK corporation,

Defendants.

Case No. 3:10-cv-00617-SC

**DEFENDANTS' MEMORANDUM IN FURTHER SUPPORT OF ITS MOTION  
SEEKING TO DISMISS FOR LACK OF JURISDICTION, IMPROPER VENUE AND  
INSUFFICIENT SERVICE OF PROCESS OR, IN THE ALTERNATIVE, TO  
TRANSFER VENUE TO THE EASTERN DISTRICT OF NEW YORK PURSUANT TO  
28 U.S.C. § 1404**

The unctuous claims of Plaintiff DIGBY ADLER GROUP LLC., ("Digby") are as empty  
as its vacuous opposition to the motion of Defendants IMAGE RENT A CAR, INC.,  
("Image") and VAN RENTAL CO., INC., ("Van").

MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANTS' MOTION TO DISMISS OR  
ALTERNATIVELY TRANSFER VENUE TO THE EASTERN DISTRICT OF NEW YORK- Case No. 3:10-cv-  
00617-SC

1 Digby is an interloping usurper attempting to quash the rights of a small business by  
 2 employing costly litigation and argument based on smoke and mirrors. Digby alleges that Image  
 3 and Van do business in California without providing any evidentiary showing to support their  
 4 allegation.  
 5

6  
 7 **DIGBY HAS FAILED TO PRESENT ANY EVIDNCE INICATING THAT THIS**  
 8 **COURT HAS JURISDICTION OVER IMAGE AND VAN**

9 Digby has employed the use of smoke and mirrors by submitting 155 pages of exhibits  
 10 and sophistry in at best misleading allegations that this Court has jurisdiction over Image and  
 11 Van. However, Digby has failed to produce a single piece of evidence indicating that this Court  
 12 has jurisdiction over Image and Van.

13 Of the 155 pages of exhibits attached to Digby's opposition only 4 quotes allude to Image  
 14 as doing business in this district. See Exhibits "A," "C," "F" and "G" referred to in the the  
 15 Declaration of Jeffrey M. Rosenfeld, dated May 26, 2010 attaching images from the website of  
 16 Image imagerentacar.com (the "Image-Website"). Exhibit "A" is a page from the Image-  
 17 Website wherein buried in the text after "we deliver conversion van rentals" are the names of the  
 18 following locations: Sandiego, San Jose, Los Angeles, California, Sacramento, Oakland, Santa  
 19 Ana, Riverside, Bakersfield, Stockton, Glendale, Irving, and Huntington Beach. Admittedly the  
 20 names of those cities may be attributed to the State of California. However, Image has never  
 21 delivered a vehicle to California and while producing the page for the Image-Website the  
 22 foregoing cities were erroneously added. (See Declaration of Shneior Zilberman). Exhibit "C"  
 23 contains a page which erroneously contains the following language: "Image Van Rentals has  
 24 been serving the San Diego area . . . for decades." However, the mention of San Diego is  
 25 obviously erroneous because Image has never serviced San Diego or any other city in California.  
 26 Exhibit "F" is a page wherein the following language appears: "Hybrid locations: Throughout  
 27  
 28

1  
2 California.” However, a closer examination of the page evidences the fact that that language is a  
3 quote from an article by Chris Brown the editor of Auto Rental News who is discussing the use  
4 of Hybrids. Moreover, Digby by its own admission only rents vans and not passenger cars or  
5 hybrids. Attached to Digby’s opposition as Exhibit “G” is a page which merely states “California  
6 Vans”. The page does not say that Image does any business or performs and service activity in  
7 California. (See Declaration of Shneior Zilberman).

8  
9 Thus, out of the not less than two thousand seven hundred ninety pages of the Image-  
10 Website Digby is only able to find the 4 quotes from 4 pages alluding to Image (albeit  
11 erroneously) as doing business in California. (See Declaration of Shneior Zilberman).

12 Attached to the opposition of Digby as Exhibits “J” and “K” are pages from the Image-  
13 Website. Those pages refer to car rentals. However, none of the Declarants provide any indicia  
14 that Digby is in the car rental business. Furthermore, the foregoing pages only are testimonials of  
15 customers who came from California and rented vehicles on the Eastern Seaboard. (See  
16 Declaration of Shneior Zilberman).

17 Attached to Digby’s opposition as Exhibits “B,” “D,” “E,” “H,” “I,” are merely  
18 references to renting vans which may be used or have been used to travel to California. (See  
19 Declaration of Shneior Zilberman).

20 Exhibit “O” and “P” of Digby’s opposition are merely passive advertisements of Image  
21 which provide no evidence of Image doing business in the state of California.

22 Attached as Exhibit “M” to Digby’s opposition is a page in which Digby alleges  
23 evidences that a customer may create a reservation from California. However, Digby has not  
24 provided any evidence of a Resident of California renting a vehicle from Image from California.  
25 Moreover, even if a resident of California could rent a vehicle from Image the vehicle would not  
26 be delivered to them in California. Moreover, they would only be able to execute a Contract and  
27 pick up a vehicle when they presented their identification at a location of Image located within  
28

1 the Eastern Seaboard twenty five hundred miles from California. (See Declaration of Shneior  
2 Zilberman).

3  
4 Finally, attached to Digby's opposition as Exhibit "Q" and "R" are pages elatedly  
5 evidencing the fact that Facebok, Inc. and Twitter, Inc. are California Companies. However,  
6 Image never entered into a contract with Facebok, Inc. and Twitter, Inc., and same simply does  
7 not confer Jurisdiction on Image and Van.

8 Due to the foregoing the propositions of law cited by Plaintiff are inapposite to Plaintiff's  
9 contention and merely support Defendants' postion that Jurisdiction does not lie in this District.  
10

11  
12 **THE VACOUS DECLERATIONS OF PLAINTIFF FAIL TO SUPPORT**  
**PLAITIFFS CONTENTIONS**

13 In support of its opposition, Digby submits the meager Declarations of Sharky Laguana,  
14 the CEO of Digby (the "CEO") Guy Higbey, the General Manager of Digby (the "General"),  
15 Andrew Moore, the Call Center Representative of Digby (the "Call Rep"), Keeley Pederson, the  
16 Call Center Manager of Digby (the "Manager") and Jeffrey M. Rosenfeld the associate of  
17 counsel for Digby (the Associate).  
18

19 However, interestingly, the foregoing declarations of the CEO, the General, the Call Rep,  
20 the Manager and the Associate all fail to state what kind of business Digby is engaged in.  
21 Moreover, they don't say that digby rents vans or cars or anything for that matter. In fact one  
22 could very well assume that Digby is a shell company in the business of creating bogus law suits  
23 in order to generate income. (Collectively the "Declerants")

24 In fact Declerants do not even allege that Digby is the owner of the Bandago trademark  
25 prior to 2008. Thus, as such they have not shown evidence that they Digby had a right in  
26 trademark prior to Defendants. As such they cannot rightfully claim that Van or Image is in  
27 violation of the Lanham Act or that Defendants have committed any trademark infringement  
28



upon Plaintiff.

**DIGBY ADMITS THAT JURISDICTION LIES IN THE EASTERN DISTRICT  
OF NEW YORK**

Essentially Digby admits that jurisdiction lies within the Eastern District of New York. Digby's opposition is more important for what it does not say: Digby does not deny that it does business in the Eastern District of New York or that jurisdiction lies in the Eastern District of New York.

Digby has failed to provide any indicia that this Court has Jurisdiction over Image and Van. Moreover, Image and Van have never directed any activities or advertising at residents of California. Even if the Court did have jurisdiction over Defendants, the appropriate venue does not lie in the Northern District of California. At a minimum, this matter should be transferred to the Eastern District of New York because every factor to be considered weighs heavily in favor of a transfer:

- Defendants' sales are in the Eastern District of New York
- All of Defendants witnesses reside in the Eastern District of New York
- The principal of Defendants, resides in the Eastern District of New York
- Defendants are incorporated and licensed to do business in New York
- Plaintiff advertises and does business in New York
- Plaintiff is incorporated and licensed to do business in New Jersey

**THE BANDAGO WEBSITE WAS A PASSIVE WEBSITE AND SAME DOES NOT  
CONFER JURISDICTION ON VAN**

In *Pebble Beach Co. v. Caddy*, 453 F. 3d 1151, 1157 (9th Cir. 2006) the court held that when a "website advertiser does nothing other than register a domain name and post an essentially 'passive website' and nothing else is done 'to encourage residents of the forum state,'

there is no personal jurisdiction.” See *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1020 (9th Cir.2000), citing *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418-20 (9th Cir.1997).

Digby has failed to provide any evidence indicating that Bandago.net was anything other than a passive website. As such this court does not have jurisdiction over Van.

**IMAGE AND VAN HAVE PRODUCED NON-PARTY WITNESSES WHO HAVE INDICATED IN DETAIL ABOUT THE TESTIMONY THEY WILL GIVE**

Shneior Zilberman and Chanie Vilenkin non-party witnesses have provided in detail their location and their testimony and its relevance. Furthermore, Menachem Sneerson, Chaim Lifsch, Rachamim Chudaitov and Moshe Gottlieb all Brooklyn residents and non-party witnesses and residents of Brooklyn have informed Shneior Zilberman that they will testify regarding the within matter.

**CONCLUSION**

Based upon the forgoing, Defendants respectfully request that this Court dismiss this action for lack of personal jurisdiction and/or lack of venue. In the alternative, Defendants request that the facts clearly establish that the present matter should not be heard by this Court. (See Declaration of Shneior Zilberman and Chanie Vilenkin).

DATED: Brooklyn, NY  
June 2, 2010

Levi Huebner & Associates, P.C.

/s/ Levi Huebner  
By: \_\_\_\_\_  
Levi Huebner

Attorneys for Defendants  
IMAGE RENT A CAR, INC.,  
and VAN RENTAL CO., INC.

Certificate of Service

The undersigned certifies that on June 2, 2010 a true and correct copy of the foregoing Memorandum of Law In Further Support of Defendants' Motion with Exhibits and the attached Declaration of Shneior Zilberman and the Declaration of Chanie Vilenkin were filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated: Brooklyn, NY  
June 2, 2010

/s/ Levi Huebner  
By: \_\_\_\_\_

**EXHIBIT 1**





About 2,790 results (0.27 seconds)

[Advanced search](#)

Everything

▼ [More](#)

▼ [Show search tools](#)

[IMAGE RENT-A-CAR | LUXURY Cars and 12-15 Passenger Van Rentals](#)

Dec 1, 2009 ... IMAGE Rent A Car an Exotic Car Rental in New York NJ CT and Florida & 10-12-15 Passenger Van Rental - Discount car rentals & Luxury Car ...

[www.imagerentacar.com/](#) - [Cached](#) - [Similar](#)

[IMAGE Rent A Car | Luxury Cars | Luxury Vans + 12-15 Passenger Van ...](#)

IMAGE Rent A Car Luxury Car Rentals LUXURY Van Rentals and 15 Passenger Vans For Rent. Perfect Corporate Solution For Groups and Celebrity Travelers.

[www.imagerentacar.com/blog/](#) - [Cached](#) - [Similar](#)

[Image Rent-A-Car :: Rates and Reservations](#)

Exotic Car Rental Center Service Area Exclusive Specials Exotic Car Rentals Cheap Car Rentals Passenger Van Rentals Airport Van Service Used Van Sales ...

[reservations.imagerentacar.com/](#) - [Cached](#) - [Similar](#)

[Connecticut Bentley GTC Convertible Rentals | IMAGE Rental Cars](#)

Connecticut Luxury Rental Cars Bentley GTC Rentals at Connecticut Luxury Car Rentals and the NEW Bentley GTC Convertible Rentals delivered in Connecticut, ...

[www.imagerentacar.com/BENTLEY\\_GTC\\_Rentals\\_West\\_Palm\\_Beach.html](#) - [Cached](#)

[Porsche Rentals MIAMI FLORIDA | IMAGE Exotic Car Rental Florida](#)

MIAMI Luxury Car Rentals and the NEW Porsche Carrera Convertible delivered in Miami, Fort Lauderdale, Orlando, Tampa, Boca Raton, Palm Beach, Orlando, ...

[www.imagerentacar.com/PORSCHE\\_Rentals\\_Miami.html](#) - [Cached](#)

[Rent Mercedes Benz in NYC - Manhattan Mercedes S550 Rentals 2011](#)

Rent Mercedes Benz in NYC - Manhattan Mercedes S550 Rentals 2011 - Mercedes Benz Rentals by IMAGE Rent the Luxury Car Rental Mercedes S550 2009 in NYC Miami ...

[www.imagerentacar.com/Rent\\_Mercedes\\_NYC.html](#) - [Cached](#)

[Mercedes Benz Rentals | IMAGE Exotic Car Rental New York Florida](#)

Mercedes Benz Rentals by IMAGE Rent the Luxury Car Rental Mercedes S550 2009 in NYC Miami Florida NJ CT DC Boston MA, Philly PA and beyond New York Luxury ...

[www.imagerentacar.com/MERCEDES\\_BENZ\\_S550\\_Rentals.html](#) - [Cached](#) - [Similar](#)

[Rent the 2009 Toyota Camry Rentals with IMAGE RENT A CAR](#)

2009 Toyota Camry Rentals and Luxury Vans from IMAGE Rent A Car in Brooklyn New York, Park Slope, JFK Newark and Lagurdai Airports, Miami and Orlando Ft ...

[www.imagerentacar.com/Toyota\\_Camry\\_Car\\_Rentals.html](#) - [Cached](#)

[IMAGE - Exotic Car Rental New Jersey Cadillac Escalade Rentals ...](#)

IMAGE - New Jersey Exotic Car Rental LUXURY CARS in New Jersey by IMAGE Luxury Car Rentals and Cadillac Escalade Rentals delivered in Connecticut, ...

[www.imagerentacar.com/CADILLAC\\_ESCALADE\\_Rentals\\_New\\_Jersey.html](#) -

[Cached](#) - [Similar](#)

[Luxury Van Rentals by Image Rent-A-Car Delivered to Boston MA](#)

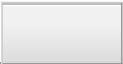
Boston Van Rentals and Luxury Van Rentals delivered in NYC, NJ CT DC exotic car by IMAGE Exotic Car Rental and Luxury Car Rentals, exotic car rentals ...

[www.imagerentacar.com/LUXURY\\_VAN\\_Rentals\\_Boston.html](#) - [Cached](#)



1 2 3 4 5 6 7 8 9 10

[Next](#)



[Search within results](#)   [Search Help](#)  
[Give us feedback](#)

[Google Home](#)   [Advertising Programs](#)   [Business Solutions](#)   [Privacy](#)   [About Google](#)